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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
LIN 03 036 51622

Office: NEBRASKA SERVICE CENTER

Date: JUL 08 2005

IN RE: Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a doctoral student and research associate at the Ohio State University (OSU) College of Veterinary Medicine; he has subsequently completed his doctorate and currently works as a postdoctoral researcher at the same university. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes his work:

I have made several pioneering and critical contributions to the research on the activation and bacteria killing mechanisms in monocytes/macrophages, their interaction with infectious pathogen *Ehrlichiae*, the infectious mechanisms in monocytes by *Ehrlichiae*, and the treatment and prevention of human Ehrlichiosis. My contributions include four areas:

- *How anti-tumor and anti-bacteria activities of macrophages are regulated by bacteria; endotoxin lipopolysaccharide (LPS):* Activation of protein kinase A/C, MAPKs pathway and expression of cytokine IL-12.
- *How bacteria Ehrlichia enter into and reproduce inside human monocytes or macrophages:* Utilizing host signaling pathways and cholesterol for their entry and proliferation.
- *How Ehrlichia can survive inside the host cell with bacteria killing environments:* Inhibition of bacterial killing activities of human monocytes including the production of toxic chemical superoxide, and down-regulation of host immune responses for the recognition of bacterial pathogens.
- *Bioinformatics Analysis of Ehrlichial whole genome sequences.*

These critical and pioneering contributions in these research areas have been published in high quality peer-reviewed international scientific journals, and presented at several international meeting[s]. In addition . . . my works have been used by researchers worldwide and yielded several other important discoveries based on my findings. My works were also recognized by many distinguished awards.

The petitioner submits ten letters which, counsel states, were "written by top researchers in the field." Of the nine witnesses (one of whom provided two letters), seven are, or were, faculty members or researchers at OSU. The eighth witness supervised the petitioner's graduate studies at the Shanghai Institute of Cellular Biology. The only initial witness with no apparent connection to universities where the petitioner has studied is Professor [REDACTED] of Drexel University College of Medicine. Prof. [REDACTED] states:

I have known [the petitioner] and his work for a few months, and thus I believe I have a fairly objective view of his attributes, qualities and strengths. . . .

[The petitioner] has already developed a very impressive array of research accomplishments and milestones. . . . He has made important and cutting-edge discoveries regarding the molecular mechanisms of bacterial pathogenesis. He has shown that the bacteria *Ehrlichia chaffeensis* can block the action of superoxide and other substances in human monocytes, which are used by the human immune system to combat invading microorganisms. His discoveries will not only shed light on our understanding of the mechanism of this chronic infectious disease in humans, but could also have a positive impact on the treatment and prevention of this infectious disease. . . .

Unlike others who have only been trained in Bioinformatics, [the petitioner's] unique talents of excellent molecular, cellular and microbiological technical skills and computational bioinformatics make him uniquely valuable to the progression in the emerging infectious diseases research. [The petitioner's] work on bioinformatics analysis in the Ehrlichial genome presented truly valuable insight into the evolution of the bacteria and our understanding in the pathogenic mechanism of this tick-transmitted bacterium. These resources, through the website and database he has established, provide researchers worldwide an opportunity to study Ehrlichiae and related pathogens – in the new drug discoveries, novel therapy, or disease prevention. Indeed, his web-based information has been accessed by researchers world-wide thousands of times just since last year.

Prof. Rest asserts that the petitioner's "work has been cited by several groups." The petitioner's initial submission, however, contains no evidence of these citations.

OSU Professor Yasuko Rikihisa, who has supervised the petitioner's doctoral research, states:

As a graduate student, [the petitioner] is instrumental in making important discoveries regarding the molecular mechanism of infection of white blood cells with [Ehrlichia]. There are two important discoveries that [the petitioner] made. First, he found that Ehrlichiae rapidly activate series of enzymes of leukocytes, leading to increase in intracellular free Ca^{2+} levels, in order to invade leukocytes and proliferate in them. Second, he discovered that Ehrlichiae inhibit generation of a toxic chemical called superoxide that kills ordinary bacteria, by human white blood cells. These results indicate that ehrlichia turn off one of [the] most powerful defense mechanisms of white blood cells against pathogens. Thus these are very significant findings, which might change the course of our current approach toward prevention and treatment of infectious diseases.

OSU Professor [REDACTED] a member of the petitioner's graduate study committee, states that the petitioner discovered "that cholesterol is essential for the infection of Ehrlichiae. . . . This novel discovery provides important information that a healthy diet is not only necessary to prevent heart diseases, but also helps to prevent infection by bacteria." Prof. [REDACTED] asserts that the petitioner's "work may lead directly to the development of strategies for the treatment and management of patients with other infectious diseases, including tuberculosis." The other witnesses associated with OSU offer similar statements.

Dr. [REDACTED] now a research scientist at the National Heart, Lung, and Blood Institute, was formerly a researcher at OSU. Dr. [REDACTED] states that the petitioner "has now accomplished something that no one else in the

field had been done [sic] in Ehrlichial research – he successfully analyzed the information underlying the genome sequences of *Ehrlichia chaffeensis* and made it available to researchers worldwide by the website and database he constructed (<http://riki-lb1.vet.ohio-state.edu/ehrlichia/>)." A visit to that web site (entitled "Ehrlichial Genome Sequence Project") shows that *Ehrlichia chaffeensis* is only one of three types of Ehrlichiosis agents described at the site. The initial witnesses do not indicate that the petitioner participated in the efforts to analyze the genomes of *Anaplasma phagocytophilum* or *Neorickettsia sennetsu*, or that the sequencing of *Ehrlichia chaffeensis* is inherently more important or significant than the sequencing of the other two species.

More broadly, researchers throughout the United States (and around the world) have compiled databases regarding the genomes of thousands of species of animals, plants, and single-celled organisms. Clearly, assembling a genome database is not inherently a unique achievement. In this context, that the petitioner is the first and only person to compile such a database for *Ehrlichia chaffeensis* is not particularly remarkable because, once the database was completed and made available, there would be no reason for any other researcher to re-compile the same data. Therefore, while we will consider the impact of the petitioner's work, the *Ehrlichia chaffeensis* database is not, merely by virtue of its existence, a strong factor in the petitioner's favor.

On May 19, 2003, the director instructed the petitioner to submit additional evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director noted that simply participating in important research is not sufficient to merit a waiver. In response, the petitioner has submitted documentation that he has completed his doctoral degree and been appointed to a two-year postdoctoral position at OSU beginning July 1, 2003. The petitioner also submits copies of four articles that cite his work. The petitioner states: "As highlighted in these papers published in top-level scientific journals, my works published in scientific journals or presented in international meetings were used by several researchers worldwide."

Three of the four citing articles are by his former professors at OSU or Shanghai Institute of Cellular Biology, and the citations are self-citations. The remaining article (which, according to the petitioner, "used my critical findings to provide strong evidences for their research results") cites the petitioner's work thusly: "a number of studies have suggested that the activation of PKC ϵ is a critical event in the signaling response of primary macrophages to either LPS (11, 12) or GM-CSF (13)." Endnote 11 cites to the petitioner's work. This is the only reference to the petitioner's work in nine pages of text; the petitioner's article is one of 73 articles cited in the bibliography. There is no evidence that this shared citation "highlighted" the petitioner's work. Frequent or heavy citation demonstrates a researcher's impact in the field, but when the petitioner documents only one independent citation, the burden is on the petitioner to establish that this one citation is demonstrative of the cited article's significance. The petitioner has not done so in this instance. Therefore, the single independent citation is not persuasive evidence that the petitioner's work has attracted significant notice.

The petitioner has also submitted additional witness letters. Unlike the first group of letters, the new letters represent a broad variety of research institutions. Dr. [REDACTED] of the Centers for Disease Control and Prevention states:

Although I am not familiar personally with [the petitioner], I am well aware of his fine investigative works that explore novel biochemical pathways of *Ehrlichia* and *Anaplasma* spp. that relate to the pathogenesis of ehrlichioses. [The petitioner's] research is important in the current understanding of how *Ehrlichia* spp. and related bacteria enter and infect white blood cells of humans and animals. . . .

I believe he is a superlative investigator from a superlative laboratory, and as such represents a scientist of exceptional merit.

Professor [REDACTED] of New York Medical College states: "I believe that [the petitioner's] findings will accelerate the understanding, prevention, and future novel therapies of these newly discovered infectious diseases. Furthermore, his novel discoveries suggest that cholesterol lowering drugs might have therapeutic value for human ehrlichioses." Prof. [REDACTED] of Yale University School of Medicine calls the petitioner "an outstanding researcher who has made significant contributions to our understanding of the pathogenesis of human ehrlichiosis," and who has created "an important body of work." Professor [REDACTED] of Universidad Centrooccidental [REDACTED] in Venezuela states that information provided by the petitioner "has greatly accelerated our research. . . . Based on [the petitioner's work], we have successfully characterized several novel antigens related to the infection of human and canine ehrlichioses." Other researchers in Japan, Turkey, and elsewhere offer similar endorsements of the petitioner's work.

The director denied the petition, stating that the dissemination of scientific findings through scholarly articles, conference presentations, and web sites is a routine and expected element of the scientific process, rather than a rare sign of impact or importance. The director acknowledged the many witness letters, but stated that none of the letters show that the petitioner "has created, or will create, a timely and economical technique for treating or eradicating the pathogens identified." The director concluded that "the record does not persuasively demonstrate that the proposed benefit from the petitioner's immigration will be national in scope or that the national interest would be adversely affected if a prospective employer were required to meet the certification requirements established by the department of labor."

On appeal, the petitioner argues that "several renowned peer researchers in the field" have asserted that the petitioner's continued work in the United States is in the national interest. It does not appear that the director gave due consideration to the numerous independent letters submitted in response to the request for evidence. These letters demonstrate that one need not be an OSU researcher to be aware of the petitioner's research, and to consider it to be important. The witnesses have not simply described the petitioner as a competent scientist who may, given time, become an influential researcher. Rather, they have described his existing findings as being influential in the field. The lack of citations of this research indicates an absence of additional favorable evidence, but this absence is not an actively negative factor that cancels out the favorable factors in the record.

We withdraw the director's finding that the petitioner's work lacks national scope, because that work involves national and international dissemination of scientific information that, by its nature, is not limited to small geographic areas. The record shows that researchers throughout the United States, and several continents, have actively followed the petitioner's work. Scientific research for publication generally satisfies the national scope test, although potentially limiting factors warrant case-by-case consideration.

The petitioner has established the importance of his work, and his employer has argued that it is important that the petitioner be the one to perform that work. Given the scientific community's reaction to the petitioner's past work, it is reasonable to project that the beneficiary's future work will also be important in the field. Upon careful consideration of the evidence of record, we conclude that the petitioner's entry as an immigrant would serve the national interest to an extent that outweighs the benefit inherent in the labor certification process.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.